

SENATE BILL REPORT

SB 6028

As of February 21, 2007

Title: An act relating to forest health.

Brief Description: Expanding provisions affecting forest health by creating a three tier technical assistance and regulatory system.

Sponsors: Senator Morton.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 2/21/07.

Brief Summary of Bill

- Designates the Department of Natural Resources (DNR) as the state lead in developing a comprehensive forest health program.
- Creates a three tiered system to address forest health issues:
 - Tier 1 consists of voluntary landowner actions and technical assistance provided by DNR.
 - Tier 2 consists of landowner actions recommended by DNR to manage developing or existing threats to forest health.
 - Tier 3 consists of mandatory landowner actions required by DNR to manage significant threats to forest health.
- Sets requirements for the administration of the forest health program.

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Staff: Curt Gavigan (786-7437)

Background: Current statute defines forest health as a forest sound in ecological function, sustainable, resilient, and resistant to insects, diseases, fire, and other disturbance, and having the capacity to meet landowner objectives.

In 2004, the Legislature created a work group to look at the issue of forest health in Washington and provide recommendations to the Legislature. The Forest Health Strategy Work Group (work group) produced findings, recommendations, and draft legislation modifying Washington's forest health statutes. In 2006, the Legislature reconvened the work group, instructing it to conduct public meetings regarding its legislative recommendations.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

According to information from the work group, Washington State contains approximately 21 million acres of forestland. By 2005, over 2.5 million of those forested acres contained elevated levels of tree mortality, defoliation, or foliage disease. The western spruce budworm and bark beetle have caused significant tree damage in the state. The work group cites overcrowded forests as contributing to these elevated forest health and fire risks.

Current forest health provisions place the primary responsibility for forest health on timber landowners. If forest insects or diseases threaten timber stands with destruction, DNR is directed to create an infestation control district. DNR provides notice to timber landowners within the district, who must proceed without delay "to control, destroy and eradicate the said" pests or diseases. If the owner does not or cannot meet these requirements within 30 days, DNR has the duty to proceed with forest treatment activities. Under some circumstances, landowners can be held responsible for a portion of the costs of such activities conducted by DNR.

Current fire hazard statutes state that those who create or allow an extreme fire hazard to exist, which contributes to the spread of a fire, may be held liable for reasonable expenses stemming from the fire. Additionally, if an extreme fire hazard is not reduced after notice is provided, DNR may treat the hazard and recover from the landowner twice the actual cost of the action.

Summary of Bill: The bill gives DNR the lead role in developing a comprehensive forest health program for the state. Within available funding, DNR must also undertake activities to include: forest health information gathering and dissemination; coordinating forest health monitoring activities; and coordinating with universities and other agencies to provide landowners with technical assistance regarding forest health.

Three tiered system: A three tiered system is created to address forest health problems that emerge:

- 1) First, voluntary landowner measures are intended to protect forests from disturbance agents, such as insects, diseases, and wind storms. Landowners are expressly encouraged to maintain their forestlands in a healthy condition in order to meet their individual objectives, protect public resources, and avoid forest health risks.
- 2) Second, the Commissioner of Public Lands may issue a forest health hazard warning (warning) when the Commissioner deems such action necessary to manage the development of a threat or to contain or suppress an existing threat to forest health. The Commissioner must specify any recommended landowner actions when issuing a warning.
- 3) Third, the Commissioner may issue a forest health hazard order (order) when the Commissioner deems such action necessary to address a significant threat to forest health. The Commissioner must specify any required landowner actions when issuing an order.

Requirements for a forest health warning or order: A forest health hazard warning or order must specify certain information, including the boundaries of the area affected and the actions landowners should or must take to reduce the hazard.

Prior to issuing a forest health hazard warning or order, the Commissioner must consider findings and recommendations from a technical advisory committee, consult with other

interested parties, and conduct a public hearing in a county within the geographic area of concern.

Notice of a forest health hazard warning or order must be given by newspaper, on DNR's website, and by personal service or mail to affected landowners. Landowners subject to a forest health hazard order may apply to DNR for remission or mitigation of the order. Such a landowner may also appeal the order to the Forest Practices Appeals Board.

Landowner duties and liability: Landowners who own land subject to a warning must take reasonable measures to reduce the danger of fire spreading where disturbance agents or dead or dying trees are likely to further the spread of fire.

Landowners who own land subject to an order may face liability if disturbance agents or dead or dying trees are likely to further the spread of fire and if the landowner has not taken those actions required by the order. Liability may include fire suppression expenses or double DNR's costs to abate the risk.

Once a fire hazard is created, the bill establishes a presumption that a fire hazard exists until DNR gives notice that the hazard has been addressed.

DNR may certify as adequate a forest health management plan, before or in response to a forest health hazard warning or order, if the plan is likely to achieve the desired result and the landowner is following the plan.

Evaluation of forest practice rules: The Forest Practices Board must evaluate the Eastside Riparian Forest Practice Rules to determine if adjustments are needed to meet the intent of those rules and in the interest of forest health. The Board must also consider creating a class of emergency forest practices that will enable forest landowners to prevent the spread of disturbance agents when their rapid spread is likely to result in extensive loss.

The bill repeals the existing regulatory provisions that address the control of forest insects and diseases.

Appropriation: None.

Fiscal Note: Requested on February 14, 2007.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There is a forest health crisis in the state. A workable forest health program would give DNR a tool to address this issue. The current regulatory structure for combating forest insects and diseases is not functional. There is another bill proposing an alternative forest health program (SB 6025), which would also allow DNR to address forest health issues. Although there may be disagreement about how the regulatory structure should look, the importance of moving forward with some proposal should not be lost. It will take several years to gear up to the third tier contemplated in the bill. This bill is not perfect, but presents a way to move forward and actively work towards improved forest health.

CON: The conservation caucus has not supported past forest health legislation. The alternative forest health proposal (SB6025), developed in cooperation with DNR, was an attempt to come to a compromise that conservation interests could support. Landowners seeking to manage forests for biodiversity purposes must be included in any consideration of forest health.

OTHER: Forest health problems are serious ones in this state and something needs to be done, but any legislation passed needs to ensure that small landowners do not bear the brunt of regulatory actions.

Persons Testifying: PRO: Vicki Christiansen, DNR; Maurice Williamson, citizen; Tim Boyd, Vaagen Brothers, Boise, Port Blakely; David Whipple, Department of Fish and Wildlife; Bob Dick, American Forest Resource Council; Debora Munguia, Washington Forest Protection Association.

CON: Miguel Perez-Gibson, Heath Packard, Audubon.

OTHER: John Stuhlmiller, Farm Bureau; Jack Field, Cattlemen's Association.